

PART IX—TRANSITION PROVISIONS

Section 81. Optional Transition Provisions Related to the Implementation of Consolidation Requirements Under FAS 167

(a) *Scope, applicability, and purpose.* This section 81 provides optional transition provisions for a State savings association that is required for financial and regulatory reporting purposes, as a result of its implementation of Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167), to consolidate certain variable interest entities (VIEs) as defined under GAAP. These transition provisions apply through the end of the fourth quarter following the date of a State savings association's implementation of FAS 167 (implementation date).

(b) *Exclusion period.*

(1) *Exclusion of risk-weighted assets for the first and second quarters.* For the first two quarters after the implementation date (exclusion period), including for the two calendar quarter-end regulatory report dates within those quarters, a State savings association may exclude from risk-weighted assets:

(i) Subject to the limitations in paragraph (d) of section 81, assets held by a VIE, provided that the following conditions are met:

(A) The VIE existed prior to the implementation date,

(B) The State savings association did not consolidate the VIE on its balance sheet for calendar quarter-end regulatory report dates prior to the implementation date,

(C) The State savings association must consolidate the VIE on its balance sheet beginning as of the implementation date as a result of its implementation of FAS 167, and

(D) The State savings association excludes all assets held by VIEs described in paragraphs (b)(1)(i)(A) through (C) of this section 81; and

(ii) Subject to the limitations in paragraph (d) of this section 81, assets held by a VIE that is a consolidated ABCP program, provided that the following conditions are met:

(A) The State savings association is the sponsor of the ABCP program,

(B) Prior to the implementation date, the State savings association consolidated the VIE onto its balance sheet under GAAP and excluded the VIE's assets from the State savings association's risk-weighted assets, and

(C) The State savings association chooses to exclude all assets held by ABCP program VIEs described in paragraphs (b)(1)(ii)(A) and (B) of this section 81.

(2) *Risk-weighted assets during exclusion period.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a State savings association adopting the optional provisions in paragraph (b) of this section must calculate risk-weighted assets for

its contractual exposures to the VIEs referenced in paragraph (b)(1) of this section 81 on the implementation date and include this calculated amount in risk-weighted assets. Such contractual exposures may include direct-credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans.

(3) *Inclusion of ALLL in tier 2 capital for the first and second quarters.* During the exclusion period, including for the two calendar quarter-end regulatory report dates within the exclusion period, a State savings association that excludes VIE assets from risk-weighted assets pursuant to paragraph (b)(1) of this section 81 may include in tier 2 capital the full amount of the ALLL calculated as of the implementation date that is attributable to the assets it excludes pursuant to paragraph (b)(1) of this section 81 (inclusion amount). The amount of ALLL includable in tier 2 capital in accordance with this paragraph shall not be subject to the limitations set forth in section 13(A)(2) and 13(b) of this Appendix.

(c) *Phase-in period.*

(1) *Exclusion amount.* For purposes of this paragraph (c), exclusion amount is defined as the amount of risk-weighted assets excluded in paragraph (b)(1) of this section as of the implementation date.

(2) *Risk-weighted assets for the third and fourth quarters.* A State savings association that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (b)(1) of this section may, for the third and fourth quarters after the implementation date (phase-in period), including for the two calendar quarter-end regulatory report dates within those quarters, exclude from risk-weighted assets 50 percent of the exclusion amount, provided that the State savings association may not include in risk-weighted assets pursuant to this paragraph an amount less than the aggregate risk-weighted assets calculated pursuant to paragraph (b)(2) of this section 81.

(3) *Inclusion of ALLL in tier 2 capital for the third and fourth quarters.* A State savings association that excludes assets of consolidated VIEs from risk-weighted assets pursuant to paragraph (c)(2) of this section may, for the phase-in period, include in tier 2 capital 50 percent of the inclusion amount it included in tier 2 capital, during the exclusion period, notwithstanding the limit on including ALLL in tier 2 capital in section 13(a)(2) and 13(b) of this Appendix.

(d) *Implicit recourse limitation.* Notwithstanding any other provision in this section 81, assets held by a VIE to which the State savings association has provided recourse through credit enhancement beyond any contractual obligation to support assets it has sold may not be excluded from risk-weighted assets.

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AUTHORITY: 12 U.S.C. 1819 (Tenth).

Subpart A also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; 1881–1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805.

Subpart B also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; 1881–1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805.

Subpart C also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; and 1881–1884; 15 U.S.C. 1681m; 1681w.

Subpart D also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 42 U.S.C. 4012a; 4104a; 4104b; 4106; 4128.

Subpart E also issued under 12 U.S.C. 1467a; 1468; 1817; 1831i.

SOURCE: 76 FR 47811, Aug. 5, 2011, unless otherwise noted.

Subpart A—Security Procedures

§ 391.1 Authority, purpose, and scope.

(a) This subpart is issued by the Federal Deposit Insurance Corporation (FDIC) under section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1828), and sections 501 and 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805(b)(1)), and section 628 of the Fair Credit Reporting Act (15 U.S.C. 1681w). This subpart is applicable to State savings associations. It requires each State savings association to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and prosecution of persons who commit such acts. Section 391.5 is applicable to State savings associations and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers). Section 391.5 requires covered institutions to establish and implement appropriate administrative, technical, and physical safeguards